

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 12-cr-20095

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

KELLI RAE SMITH,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING MOTION TO
AMEND, AND DENYING MOTION TO STRIKE**

On December 22, 2015, Defendant Kelli Rae Smith filed a pro se motion to amend her motion to vacate under 28 U.S.C. § 2255. *See* Def.'s Mot. Amend, ECF No. 52. She seeks to include claims that her plea was entered into involuntarily or unknowingly based on the fact that the appeal waiver in her plea agreement was never explained to her. She also seeks to include claims of ineffective assistance of counsel relating to the plea process. She claims that her counsel was absent when she signed her plea agreement and did not explain anything in the agreement to her. The Government moved to strike her motion to amend. *See* Mot. Strike, ECF No. 55. Both motions were referred to Magistrate Judge Patricia T. Morris for report and recommendation.

On January 8, 2016, Judge Morris issued a report recommending that Defendant's motion be denied because her claims did not relate back to the claims she initially brought in her § 2255 motion. *See* Rep. & Rec., ECF No. 57. Judge Morris also recommended that the Government's motion to strike be denied as moot. *Id.*

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 57, is **ADOPTED**.

It is further **ORDERED** that Defendant's Motion to Amend, ECF No. 52, is **DENIED**.

It is further **ORDERED** that the Government's Motion to Strike, ECF No. 55, is **DENIED as moot**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 8, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 8, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager